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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 1201

Fred G. Hayden, d/b/a Houston International Airport Limousine Service,

Petitioner

v.

A. G. Bowen, et al,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Fred G. Hayden prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on November 26, 1968.

OPINIONS BELOW

The District Court rendered a memorandum opinion, unreported (R. 400-414), and the opinion of the Court of Appeals is reported at 404 F.2d 682. The opinions of the District Court and the Court of Appeals are set out in the Appendix, pp. 1, 11.

JURISDICTION

The judgment of the Court of Appeals was entered on November 26, 1968. Petitioner's timely filed Petition for Rehearing was overruled by order entered on

December 26, 1968. Petitioner's Motion for a Stay of Mandate until March 26, 1969 was granted on January 2, 1969. The jurisdiction of this Court is invoked under 28 U.S.C., §1254(1).

QUESTIONS PRESENTED

Under authority of two successive unexclusive franchises granted to him by the City of Houston to use the streets of the city "to transport persons, with their personal luggage, from the Houston International Airport [owned by and located within the City] to points within the City of Houston, and from such points within the City of Houston to such airport", Petitioner engaged in the business of transporting passengers and their luggage in eleven passenger limousines to and from the Airport and such points. During the years relevant to this suit, Petitioner transported the following percentages of the total arriving and departing Airport passengers: 1961 - 15.83%; 1962 - 13.88%; 1963 - 13.19%; 1964 - 9.33%; and 1965 - 10.72%. No airline had any control over Petitioner's fares, schedules, routes or policies, and he had no arrangement with anyone for prepaid or prebooked fares. Respondents were employed by Petitioner in the operation of this business. The questions presented are:

1. Whether any Respondent employed as a driver, starter, checker, or dispatcher in the business of transporting persons from the Airport to points within the city and from such points to the Airport was engaged in "commerce" as defined in 29 U.S.C. §203.

2. Whether the following findings of the Court of Appeals are clearly erroneous: The Houston International Airport is located near the southern boundary of the city; transportation to and from the Airport was provided primarily by taxicabs, limousines and private automobiles; no public transit system served the Airport; Petitioner's franchise directed that the limousines be used exclusively to provide public airport ground transportation services; the limousine service worked hand-in-glove with airlines; and when a flight schedule was changed, notice of the change was sent to the limousine office.

3. Whether the finding of the District Court, affirmed by the Court of Appeals, that Petitioner did not have an agreement with all Respondents, except Respondents Bowen, Brown and Gray, that tips were a part of their wages, is clearly erroneous.

STATUTES INVOLVED

The statutes involved are set forth below:

> "As used in this Act --
>
> * * *
>
> "(b) 'Commerce' means trade, commerce, transportation, transmission, or communication among the several States or between any States and any place outside thereof." 29 U.S.C. 203; 52 Stat. 1060.
>
> "Every employer shall pay to each of his employees who in any

workweek is engaged in commerce or in the production of goods for commerce wages at the following rates --

(1) Not less than .... an hour ...." 29 U.S.C. 206(a); 52 Stat. 1060. 1/

"Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed; . . ." 29 U.S.C. 207(a); 52 Stat. 1060

STATEMENT OF THE CASE

This is an action, in which Federal jurisdiction is based on 29 U.S.C. §1337, for unpaid minimum wages and overtime compensation under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201-219, brought by Respondents who were

1 $1.00 per hour through September 2, 1961; $1.15 per hour from September 3, 1961, through September 2, 1963; and $1.25 per hour from September 3, 1963. 29 U.S.C., §206.

formerly employed by Petitioner in the performance of two successive unexclusive franchises granted to him by the City of Houston to use the streets of the city "to transport persons, with their personal luggage, from the Houston International Airport to points within the City of Houston, and from points within the City of Houston to such airport (R. 377, Pl. Ex. No. 1, Def. Ex. No. 1).

During the period from June 21, 1961 to February, 1965 (herein called "relevant period") Respondents were employed at various times by Petitioner as drivers, starters, checkers or dispatchers. The hourly wage rate paid directly by Petitioner was: driver - $1.00; checker - $1.10; starter 0 $1.44; and dispatcher - $1.44. Petitioner did not compensate an employee for overtime at a rate of one and one-half his regular hourly rate (R. 34, 35).

The City of Houston (herein called "City") owned and operated the Houston International Airport (herein called "Airport") which was located within the City, not near, but approximately four miles from its southern limits (R. 421, Def. Ex. No. 7, R. 292). Petitioner engaged in the business of transporting persons and their luggage in motor vehicles, commonly known as airport limousines, from various points in the city to the Airport and from the Airport to various points in the city. Petitioner engaged in this business under authority of two ordinances enacted by the City Council of the City (the first expired

and the second began on June 8, 1962) granting him an unexclusive "franchise to transport persons, with their personal luggage, from the Houston International Airport to points within the City and from points within the City to such Airport (R. 16, 247, 421, Def.Ex. No. 1, Pl. Ex. No. 1). Both franchise ordinances prescribed the fares to be charged; regulated the service to be performed, the motor vehicles to be used, the subject of routes and schedules for pickup and delivery of passengers; required Petitioner to pay a gross receipts' charge, to maintain insurance, to maintain certain records; and provided grounds for forfeiture of the franchise (Def.Ex. 1 and Pl. Ex. 1). The 1962 ordinance prescribed fares of $.75 for airline personnel and children under 12 years of age and $1.50 for all other passengers (R. 429).

Both ordinances completely regulated the operation of the airport limousine service, and the City was the sole authority regulating Petitioner's business. No airline, by contract or otherwise, had any control over Petitioner's schedules, routes, fares, or policies. Fares were paid directly to Petitioner by passengers, no fares were collected by airlines, and except for fares of airline personnel, none were paid by airlines. Transportation was contracted for by passengers independently of the air journey, and coupons for transportation could not be obtained through airlines or other sources. Petitioner was not obligated, by contract or otherwise, to perform any service for any airline. (R. 329-331)

Both ordinances found that it was not practical to prescribe detailed schedules or routes or to require Petitioner to operate over an established line. Both ordinances required Petitioner to provide limousines, with not less than a seven-passenger capacity, in a sufficient number to provide ground transportation twenty-four hours a day, seven days a week, for all incoming and outgoing flights at the Airport. From 1957 through June, 1962, Petitioner used seven-passenger Cadillacs and from that time used a "Checker", a motor vehicle with four doors on each side, a passenger capacity of eleven, and space for luggage at the rear (R. 267-268). Petitioner operated twenty or twenty-two vehicles during the relevant period (R. 267).

Under the first ordinance, Petitioner designated pickup and delivery points within the City, but under the second ordinance the City Aviation Director designated such points. On June 15, 1963, some thirty-eight points, including hotels, office buildings, shopping centers, etc., had been designated (R. 276, Def. Ex. 4).

To comply with the scheduling requirement of the City, Petitioner did not work hand-in-glove with airlines, but prepared limousine schedules from the Official Airline Guide, a private publication issued twice a month, showing the schedules of all airlines. Petitioner scheduled the departure of his limousines from the Airport and from pickup points in the City to coordinate with the arrival and

departure times of flights of all scheduled airlines, attempting to allow twenty to twenty-five minutes for driving time from the last pickup point to the Airport, and to pick up passengers for different airlines on the same trip. Airlines did not send flight schedule changes to Petitioner. (R. 328, 329, 244)

Petitioner suggested routes for drivers to follow between the Airport and pickup areas, and from pickup areas to the Airport, but drivers had authority to deviate from the routes and were permitted to let a passenger off along a suggested route (R. 17, 18, 50). In picking up or delivering passengers, limousines would not stop at a pickup point unless there was a passenger for such point (R. 77).

The layout of the Airport is shown on Defendant's Exhibit No. 3 (R. 259-261). The entrance to the terminal building is on the second floor, to which a ramp, divided into two lanes, for motor vehicles, was provided. The inner was for commercial vehicles and the outer for private vehicles. A similar drive is provided on the ground floor. The upper ramp was used for discharging passengers and the lower ramp for picking up passengers (R. 261-265, 285).

An employee of Petitioner, called a starter, was stationed on the lower ramp to assist passengers to take limousines to delivery areas (R. 262-267). At his place of business near the downtown district Petitioner kept a dispatcher. Persons desiring transportation to the

Airport from pickup points could call the dispatcher for reservations and reservations could be called to a dispatcher by the various airlines (R. 265-275). Drivers of limousines at the place of business and those completing a delivery of passengers from the Airport were instructed by the dispatcher as to pickup points where there were passengers desiring transportation. A limousine delivering passengers to the Airport would discharge them on the upper ramp, and then get in line to await his turn to pick up passengers on the lower ramp (R. 263, 264).

Petitioner's limousines transported airline passengers, airline personnel and other patrons of the airport. Normally airline personnel rode limousines in the same manner as other passengers, but by special arrangement and not by contract, at various times during the relevant period, Petitioner provided a separate (not reserved) limousine for personnel (not just crews) of three airlines for a flat fee. The service was available to any person at the Airport or a pickup point (R. 257-259).

The franchise did not require the limousines to be used exclusively to serve the Airport, but permitted Petitioner to use the limousines for other purposes with "prior approval by the City Council" (R. 428), and limousines were available and used for charter service, such as sightseeing tours, weddings, movement from hotel to hotel, and for special groups visiting the City (R. 255).

A person desiring transportation to or from the Airport had a choice of a multi-

tude of modes of conveyance. In fact, during the relevant years, Petitioner transported only the following percentages of the total arriving and departing passengers: 1961 - 15.83%; 1962 - 13.88%; 1963 0 13.19%; 1964 - 9.33%; and 1965 - 10.72% (R. 277-279; Pl. Exs. 6 and 7).

Twelve hundred parking spaces were provided for private automobiles on the Airport grounds and spaces were provided on the upper ramp and lower for private automobiles to discharge and pick up passengers, respectively (R. 284, 285).

The 1962 franchise provided that the privilege granted should not "mean that such passengers or patrons of the Airport cannot use taxicabs or other public transportation services available for conveyance to and from the Airport"(R. 424). The City prescribed a rate for taxicabs at $.45 for the first two-thirds of a mile and $.10 for each additional one-third of a mile for one to four passengers (R. 106, 107). The fare of three or four passengers riding in a taxicab would be less than the limousine fare. The City provided approximately thirty-two spaces for taxicabs at the Airport, most of the time the spaces for taxicabs were filled and taxicab service was always available (R. 80, 280, 282).

Transportation to and from the Airport was also available by charter service from two public transit systems operating within the City (R. 252, Def. Ex. 2). The evidence is inconclusive on whether the Airport was served by a public transit

system, but Petitioner had seen buses of Pioneer, a rapid transit system, in the terminal grounds (R. 351, 352). A large majority of the motels and hotels in Houston provided a bus or limousine service by which passengers were delivered to and picked up from the Airport (R. 287, 288), and several rental car agencies, including Hertz, National and Budget, had automobiles for rent at the Airport (R. 286-288).

Other limousine services were available for charter service. One had a fleet of ten vehicles, the Shamrock Hotel had two, and Executive Service had four vehicles. The Galveston Limousine Service was provided with two loading spaces on the lower ramp and provided transportation to the City of Galveston (R. 290-293).

Petitioner and the witnesses Hall, Edge and Wood testified that Petitioner had an understanding with each driver that his salary would be $1.00 per hour plus tips (R. 239, 336, 340, 232, 233, 225-230). Bowen, Brown and Gray were the only respondents who testified, and they denied that they had such an agreement with Petitioner (R. 45, 89, 148). There is no testimony that Petitioner did not have such an understanding with the remaining Respondents.

After trial to the court, without a jury, the District Court entered judgment awarding a specific sum of money to each Respondent (aggregating $19,913.10) and the sum of $4,500.00 as attorney's fees (R. 417). The Court of Appeals affirmed

the judgment of the trial court, and Petitioner's timely filed Petition for Rehearing was overruled on December 26, 1968.

REASONS FOR GRANTING THE WRIT

I

The Public Importance of the Issue Presented

In practically every city of the nation served by a commercial airline, the Secretary of Labor and the operator of a limousine service or bus line transporting passengers to and from an airport face the question of whether the employees of such an operator are engaged in "commerce" within the meaning of the Fair Labor Standards Act. The public importance of the issue here compelled the Secretary of Labor to advise the Court of Appeals:

> "The Secretary of Labor submits this brief as amicus curiae because the case presents issues of substantial importance to the general enforcement of the Fair Labor Standards Act (Act of June 25, 1938 c. 676, 52 Stat. 1060, as amended; 29 U.S.C. 201, et seq)." Amicus Curiae Brief, pp. 1.

The importance of the issues to the innumerable operators of airport buses and limousines who cannot determine from reported decisions whether or not their employees are covered by the Act is no less substantial. The court below decided

an important question of federal law which has not been, but should be settled by this Court.

Although United States v. Yellow Cab Co., 332 U.S. 218 (1947), decided the principles controlling this case, this Court has not decided the precise question presented. The decision of the Court of Appeals in the instant case conflicts with Mateo v. Auto Rental Co., 249 F.2d 831 (C.A. 9, 1957), and Cederblade v. Parmelee Transp. Co., 94 F.Supp. 975 (N.D. Ill. 1947) affirmed, 166 F.2d 554 (C.A. 7, 1948). The Secretary of Labor criticizes Mateo as being "erroneously decided" and Cederblade as making "an erroneous interpretation of the 'local taxicab' ruling" in Yellow Cab Co., Amicus Curiae Brief, pp. 12.

The decision below also conflicts with the principles applied in Evanston Cab Co. v. City of Chicago, 325 F.2d 907 (C.A. 7, 1963, cert. den., 377 U.S. 943) and the principles recognized in Southerland v. St. Croix Taxicab Association, 315 F.2d 364, 369 (C.A. 3, 1963). The decision below is not similar to and is not in conflict with, Airlines Transp. v. Tobin, 198 F.2d 249 (C.A. 4, 1952). The reliance on Tobin, however, adds to the confusion created by the conflict between the Fifth Circuit and the Ninth and Seventh Circuits.

With these conflicts unresolved by a decision of this Court on the precise question, it is impossible for the Secretary of Labor to enforce the Fair Labor

Standards Act uniformly in all of the circuits. It is equally impossible for the hundres of operators of airport buses or limousine services in all the circuits to determine whether their employees are engaged in commerce. This Petition should be granted to authoritatively settle "issues of substantial importance to the general enforcement of the Fair Labor Standards Act."

II

The Decision Below Conflicts in Principle With Decisions of This Court

The decision below squarely conflicts with the principles announced in United States v. Yellow Cab Co., 332 U.S. 218 (1947). Applying the principle that interstate commerce is an intensely practical concept drawn from the normal and accepted course of business, Yellow Cab Co. rejected the contention that taxicabs transporting passengers to and from Chicago railroad stations were engaged in commerce. This Court held that the common understanding is that a traveler begins his interstate movement when he boards the train at the station and ends such journey when he disembarks at the station in the city of destination and that what happens prior or subsequent to the rail journey, "in the absence of some special arrangement, is not a constituent part of the interstate movement." In essence, the holding is that the common understanding of the beginning and end of an interstate journey is not to be discarded unless the relationship of the

interstate traveler, individually or through his carrier, to the local carrier alters the beginning and end of the journey.

The factors Yellow Cab Co. states to be relevant to the relationship between the interstate traveler and the local carrier are identical with those between Petitioner and the interstate air traveler. Petitioner has no contractual arrangement with air carriers, and his fares are not paid or collected as a part of airline fares. His service is contracted for independently of the air journey, and his service is but one of many that may be used because the air traveler has complete freedom to arrive at or leave the Airport by many means of transportation. Also, Petitioner's service, by ordinance, is confined to points within the City.

The decision below is not based on these factors or the common understanding of the beginning and end of an interstate journey. Respondents were held to be engaged in commerce because "air travel, predominantly interstate, into and out of the Houston International Airport was the very lifeblood of the limousine service" and because, in the opinion of the Court, regulation by a municipal corporation to effect efficient service by airport limousines is the same as complete contractual control of the fares, schedules and arrangement for the carriage of passengers by an airline.

Considering the small percentage of the total arriving and departing passen-

gers transported by Petitioner, it is manifest that the first basis of the holding below is premised on what happened "prior or subsequent to the" air journey, although there were no special arrangements for transportation between the interstate traveler and Petitioner. In the absence of such special arrangement, Yellow Cab dictates that the common understanding of the beginning and end of an interstate journey is at the Airport.

Under Yellow Cab Co., when Jones from New York deplanes and walks into the terminal building in Houston, what happens subsequent to his air journey, "in the absence of some special arrangement, is not a constituent part of the interstate movement." Under the holding of the court below, the end of the interstate journey is marked by the decision Jones makes in the terminal building. If he decides to ride in a limousine, his interstate journey continues. If he decides to ride in a taxicab or other mode of conveyance, his decision terminates the interstate journey. Later, as Jones sits in his hotel room, undecided on the transportation to take to the Airport, his decision to ride a limousine or a taxicab determines when his interstate journey begins. The example emphasizes the conflict of the holding below with the principles of Yellow Cab Co.

The decision below also conflicts in principle with Pennsylvania R. Co. v. Knight, 192 U.S. 21 (1903). Instead of

applying the "practical considerations" determining the beginning and the end of an interstate air journey, the court below relied on facts distinguishing Petitioner's limousines from a taxicab and the fact that "with few exceptions, the exclusive source" of Petitioner's patronage was interstate air travel. In Knight, the railroad company maintained a cab service for the sole purpose of transporting railroad passengers exclusively between its ferry station and their residences and hotels. This service was held to be an independent local service, preliminary or subsequent to the interstate journey. Yellow Cab Co. observed that Knight "does illustrate the normal and accepted concept of the outer limits of this type of interstate journey."

Inasmuch as the taxicabs transported railroad passengers exclusively, under the decision below that Petitioner's operation was an integral part of the interstate journey because the essential nature of his business was the transportation of airline passengers, the service in Knight was interstate, not intrastate.

The conclusion is inescapable that the decision below conflicts with the principles of Yellow Cab Co. and Knight.

III

The Decision Below Conflicts With Decision of Other Courts of Appeals

The decision in the instant case squarely conflicts with Mateo v. Auto

Rental Company, 240 F.2d 831 (C.A. 9, 1957) and Cederblade v. Parmelee Transp. Co., 94 F.Supp. 965 (N.D. Ill. 1947, affirmed, 166 F.2d 554 (C.A. 7, 1948)), the principles applied in Evanston Cab Co. v. City of Chicago, 325 F.2d 907 (C.A. 7, 1963,cert. den. 377 U.S. 943), and principles recognized in Southerland v. St. Croix Taxicab Association, 315 F.2d 364 (C.A. 3, 1963).

Mateo held that employees of Auto Rental who were engaged principally in transporting airline and steamship passengers to and from the Honolulu Airport or the Port of Honolulu and the downtown and Waikiki districts, were not in commerce. The activities of Auto Rental were more closely related to interstate commerce than those of Petitioner. Fifty percent of Auto Rental's passengers from incoming air travelers were prepaid or prebooked by purchase of coupons from travel agents or various airlines. Auto Rental transported credit passengers whose fare was charged to individual travel agents, and it executed contracts with various airlines to transport crew members on a per car charge basis. Petitioner has no arrangement for prepayment of fares or transporting credit passengers. All fares are paid in cash by the passenger. Petitioner has not contracted with any airline to transport its crews, but arrangements could be made for transportation of airline personnel in a separate limousine.

In other respects the activities of Auto Rental and Petitioner are similar.

Auto Rental used and Petitioner uses an eleven passenger limousine to transport airline passengers, airline personnel, and other patrons of the Airport. Auto Rental "occasionally drove the airporters on sight-seeing tour trips". Petitioner uses the limousines for charter services. Auto Rental's dispatcher, like Petitioner, endeavored to coordinate the airporters' schedules with airline flights. No airline exercised any control over the schedules, fares or policy of Auto Rental, and none exercises such control over Petitioner.

Auto Rental "was engaged in a stiff competitive battle with other airporter systems and taxicab companies". Petitioner, operating under an unexclusive franchise, engaged in competition so stiff that the percentage of the number of arriving and departing airline passengers transported by him declined from 15.83% in 1961 to 10.72% in 1965.

The dissimilarities in the facts in Mateo and the facts here noted in the decision below are immaterial. Petitioner operates under "the strictures of a franchise", but it is inconceivable that Auto Rental did not operate under a license or certificate. Mateo points out that the fares of Auto Rental were fixed upon the advice of local authorities and that a certain contract was not recognized by the Hawaii Aeronautics Commission. Mateo does not state that Auto Rental determined its own pickup and delivery points; the opinion only states that passengers were dropped at individual destinations so long as the place was on or

near the main route. Petitioner discharges passengers at points along his suggested routes

The opinion does not show that Auto Rental was obligated by governmental authority to coordinate its activities with flight schedules, but states that "the dispatchers endeavored to coordinate airporter schedules with the early morning and early evening transocean flights." Theopinion does not state that Auto Rental was free to use its limousines for purposes unrelated to airport transportation, but reflects that it "occasionally drove the airporters on sightseeing tour trips." With City Council approval, Petitioner could and did use limousines for sightseeing trips and other charter services.

The court below was not obliged to follow Mateo, but it cannot be distinguished on the grounds stated. The primary foundation of the holding below is that interstate air travelers were the principal source of Petitioner's business. All of Auto Rental's passengers were trans-ocean passengers.

Applying the distinction made in Yellow Cab Co., Cederblade, supra, held that the transportation of passengers by Parmelee, under contract with railroads, between railroad stations in Chicago, was a constituent part of the interstate movement, but that its operation of airport buses transporting passengers and baggage in both directions between downtown Chicago and the Municipal Airport

was not "a part of the stream of interstate commerce" and the employees of Parmelee in the latter activity were not "within the scope of the Fair Labor Standards Act."

In attempting to distinguish Yellow Cab Co., the court below gave controlling weight to the facts that the taxicabs did not serve railroad passengers exclusively and were required to serve every person within the city. Yellow Cab does state that transportation of persons in taxicabs from Chicago railroad stations was intermingled with local operations, and that a taxicab did not limit its service to railroad passengers, but was required to serve every person in Chicago. As Cederblade points out, however, these statements were made to distinguish taxicab operations from Parmelee's interstation transfer of passengers and not to distinguish a taxicab operation from a railroad or airport limousine service. Cederblade gave weight to the facts that the taxicab companies had no contractual or other arrangement with the interstate railroads, their fares were not paid or collected as a part of the railroad fares and the traveler had complete freedom to arrive at or leave the railroad station by any of a number of means of local transportation. Weight was given to these facts to show that nothing happened prior or subsequent to the air journey to alter the common understanding of the beginning and end of such journey. The controlling factors in Cederblade are present here, but the court below refused to apply them.

Following Yellow Cab Co., Evanston Cab Co., supra, held that certain taxicab companies which had been, in effect, granted an exclusive right to transport passengers to and from the O'Hare Airport by the city refusing to permit other taxicabs to render taxi service there, except when specially contracted for prior to rendering such service, were not in commerce. Quoting from Yellow Cab Co., the court gave weight to the common understanding of the beginning and end of an interstate journey, to the fact that in the absence of special arrangement what happens prior or subsequent to an air journey is not part of the interstate movement, to the freedom of the traveler to leave the airport by other forms of transportation, and to the fact that service by the taxicab was contracted for independently of the air journey.

In holding that passengers transported from an airport by a tour agency under contract with the passenger's employer were in the stream of commerce from the time they left their homes until they returned home again, Southerland, supra, applying a factor from Yellow Cab Co., points out "This is not a situation where the transportation from the airport to the hotel was local haulage in the sense that the traveler's interstate journey had ended at the airport at which point he could independently contract for his transportation to his hotel by conveyance of his own choice."

The opinion below cannot be squared

with the holdings in Mateo and Cederblade, the principles applied in Evanston Cab Co., or the principle recognized in Southerland. The common understanding of the beginning and end of an interstate air journey also applies to the instant case because there was no special arrangement between Petitioner and interstate travelers ("what happens prior or subsequent" to the air journey) altering the beginning or end of their journey.

CONCLUSION

To confirm the factors underlying the holding in Yellow Cab Co., to protect the common understanding of the beginning and end of an interstate journey, to resolve the conflict between the decision below and the contrary decisions of the Ninth and Seventh Circuits and the contrary view of the Fourth Circuit, and to guarantee uniform enforcement of and compliance with the Fair Labor Standards Act throughout the nation, the petition for writ of certiorari should be granted.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned counsel for Petitioner Fred G. Hayden, a member of the Bar of the Supreme Court of the United States, certifies that a copy of the foregoing petition has been served upon Respondents by the undersigned personally delivering a copy thereof to Mr. George C. Dixie, Attorney of Record for Respondents, at his office at 505 Scanlan Building, Houston, Texas 77002, on this, the ____ day of March, 1969.

Raymond M. Hill

Counsel for Petitioner